

1
2 IN THE UNITED STATES DISTRICT COURT
3
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA

5
6 DESMOND J. DICKERSON,

No. C 08-03305 CW (PR)

7 Plaintiff,

ORDER OF DISMISSAL WITH LEAVE
TO AMEND

8 v.

9 CITY OF OAKLAND, et al.,

10 Defendants.

11 INTRODUCTION

12 Plaintiff Desmond J. Dickerson has filed a pro se civil rights
13 action pursuant to 42 U.S.C. § 1983. Plaintiff has been granted
14 leave to proceed in forma pauperis.

15 BACKGROUND

16 According to the allegations in the complaint, Plaintiff was
17 subjected to improper force during the course of his arrest.
18 Plaintiff seeks monetary damages for his physical and mental
19 injuries.

20 DISCUSSION

21 A federal court must conduct a preliminary screening in any
22 case in which a prisoner seeks redress from a governmental entity
23 or officer or employee of a governmental entity. See 28 U.S.C.
24 § 1915A(a). In its review, the court must identify cognizable
25 claims and dismiss any claims that are frivolous, malicious, fail
26 to state a claim upon which relief may be granted or seek monetary
27 relief from a defendant who is immune from such relief. See id.
28

1 § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
2 construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,
3 699 (9th Cir. 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must
5 allege two essential elements: (1) that a right secured by the
6 Constitution or laws of the United States was violated, and
7 (2) that the alleged violation was committed by a person acting
8 under the color of state law. See West v. Atkins, 487 U.S. 42, 48
9 (1988).

10 According to the allegations in the complaint, Officer John
11 Mitchell from the Oakland Police Department used excessive force
12 against Plaintiff during the course of his arrest. The use of
13 excessive force by a law enforcement officer in effectuating an
14 arrest states a valid claim under 42 U.S.C. § 1983. See Graham v.
15 Connor, 490 U.S. 386, 394-95 (1989). Here, however, Plaintiff has
16 failed to allege the date or location of the use of force.
17 Plaintiff is granted leave to amend the complaint to set forth
18 these additional facts regarding the alleged use of force.

19 CONCLUSION

20 For the foregoing reasons, the Court hereby orders as follows:

21 1. Plaintiff's complaint is DISMISSED WITH LEAVE TO AMEND.
22 Within thirty (30) days of the date of this Order, Plaintiff may
23 file an amended complaint to correct the deficiencies as set forth
24 above.

25 2. Plaintiff must submit his amended complaint on the
26 attached blank civil rights complaint form, clearly label the
27 complaint an "Amended Complaint," and write in the case number for
28 this action -- C 08-3305 CW (PR) -- on the form. If Plaintiff

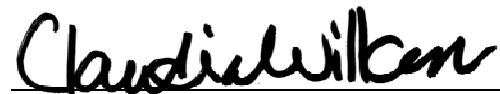
1 fails to file an amended complaint within the thirty-day period,
2 this action will be dismissed.

3 3. The Clerk of the Court shall send Plaintiff a blank civil
4 rights form along with a copy of this Order.

5 4. It is Plaintiff's responsibility to prosecute this case.
6 Plaintiff must keep the Court informed of any change of address and
7 must comply with the Court's orders in a timely fashion.

8 IT IS SO ORDERED.

9 Dated: 1/21/10



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 DESMOND J DICKERSON,

5 Plaintiff,

6 v.

7 CITY OF OAKLAND et al,

8 Defendant.
9 _____/

Case Number: CV08-03305 CW

CERTIFICATE OF SERVICE

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

11 That on January 21, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
13 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
14 receptacle located in the Clerk's office.

15 Desmond J. Dickerson w/CR form
16 711 Cherry Way
17 Hayward, CA 94541

18 Dated: January 21, 2010

19 Richard W. Wieking, Clerk
20 By: Sheilah Cahill, Deputy Clerk
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